

Landowner Liability in Fee-Hunting Enterprises

Editor's Note: The following information is not intended as legal advice. Its purpose is to create an awareness of landowner liability and of the need for qualified legal counsel. Persons entering into a fee-hunting agreement should consult an attorney, their insurance agent, and other business advisors.

Landowners who allow hunters access to their property for pay may subject themselves to liability risks that deserve special attention. Many landowners are concerned about making themselves vulnerable to liability lawsuits. To reduce their liability exposure, landowners must simply exercise what is considered reasonable care for all visitors. Reasonable care varies with the circumstances involved. Even when all precautions have been observed, prudent landowners may find they still need "layers" of specific liability protection.

Liability and Negligence

Negligence must be proven in order for the landowner to be held liable for a personal loss or injury. A landowner will most frequently be held liable for losses or injuries that occur as a result of his or her gross negligence or willful misconduct. An example of willful misconduct is the setting of traps aimed at harming trespassers. In the absence of any intentional wrongdoing, in order for the landowner to be held liable, it must be proved that he did not exercise the reasonable care to prevent injury that is expected under the law.

Common law (the body of case law developed in England and adopted in Alabama) established principles in which the degree of care expected of a landowner is dependent upon the classification of visitors as either trespassers, licensees, or invitees.

Trespasser—A trespasser enters land uninvited and without any right to be there. Common law holds that a landowner is liable only for injuries to trespassers that result from gross negligence or willful misconduct. In

Alabama, all hunters must possess written permission from the landowner to hunt on his or her land.

Licensee—A licensee enters property with permission from the landowner. The landowner does not require the licensee to pay a fee for access. Under common law, in addition to the duties owed a trespasser, the landowner has the further duty to warn licensees of hidden dangers contained within his or her property.

Invitee—An invitee enters land for the benefit of the landowner as well as for personal benefit and is required to pay a "consideration" (fee or service) to the landowner in exchange for access. Common law establishes that, for an invitee, a landowner must inspect the property for hidden dangers and either remove them or give adequate warning of their presence if they are not already obvious to a reasonable observer. Hunters who pay for the right to hunt are considered invitees.

Reducing Liability Exposure

Liability lawsuits brought against private landowners for negligence involving hunting accidents are not common. But, reasonable landowners do not want accidents to occur, whether or not they may be held liable. The following suggested steps should reduce liability exposure by providing layers of protection for fee-hunting operations on private lands.

Safe Premises—Inspect the property and note in writing all potentially hazardous situations. Give each guest a map of the property. Take the time to mark and point out all boundaries and hazardous conditions.

Written Rules—Supply each user with a set of regulations that are aimed at preventing accidents and protecting the property. Have the guest sign a copy of the rules stating that he or she has read them.

Written Release—Each guest should sign a written statement stipulating that he or she holds the landowner innocent of any responsibility before using the premises.

Liability Insurance—Hunting clubs

can obtain liability insurance for their members at reasonable costs.

Landowners may be listed as additional insured parties on most policies. This coverage protects both the landowner and the hunting group should either be found guilty of negligence. The hunters pay for this insurance. If a landowner wishes to require this kind of insurance, it should be clearly stated in the lease.

Owners', landlords' and tenants' (OL&T) policies which cover recreational enterprises are available through some insurance companies. Prices and coverage vary according to individual situations. OL&T policies for hunting enterprises may also be added on to existing farm policies. Other sources for hunting liability insurance are:

The Southeastern Wildlife Federation

P. O. Box 1109
Montgomery, AL 36102
1-800-822-9453
www.alawild.org/southea.htm

The Alabama Forest Owners' Association

P. O. Box 361434
Birmingham, AL 35236
(205)987-8811
www.alabamaforestowners.com

The National Rifle Association of America

Attn: Membership
11250 Waples Mill Rd.
Fairfax, VA 22030
1-800-672-3888
www.nrahq.org/givejoinhelp/membership/benefits.asp

Each liability situation is different. If you have any special concerns or problems with your liability exposure, contact an attorney.

Wildlife Management

In order to stay in business and to perpetuate opportunities for quality hunting experiences, the landowners and

hunters must attempt to improve and maintain wildlife habitats and populations. Fortunately, wildlife researchers and managers have developed effective habitat management programs that can easily be applied to private lands. In most cases, wildlife habitat management can be effectively integrated into current land-use practices.

Technical advice and assistance in formulating a wildlife habitat management plan is available through the Alabama Cooperative Extension Service, the Alabama Department of Conservation and Natural Resources, the Soil Conservation Service, the Alabama Forestry Commission, and private natural resource consultants. Contact your county Extension office for more information.

Reprinted with permission from ANR-533. Recommended for Extension use by Lee Stribling, Associate Professor, Wildlife Economics and Management and Extension Wildlife Specialist, Auburn University. This article was adapted from "Developing Hunting Enterprises on Private Lands," 1988, by Neal Wilkins, Extension Assistant, Forestry, Wildlife, and Fisheries, University of Tennessee. Pub. No. PB1305. 